

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.17 OF 2011

Sri Bipul Kumar Chakraborty,
S/O. Late Uttam Charan Chakraborty,
Resident of Ramnagar Road No.5,
P.O.-Ramnagar, P.S.-West Agartala,
District-West Tripura.

..... **Claimant-Appellant.**

- V e r s u s -

1. Sri Siddhartha Das,
S/O. Sri Subhash Chandra Das,
Resident of Ramnagar Road No.2,
P.O. Ramnagar, P.S.-West Agartala,
District-West Tripura.
(Owner of the vehicle bearing No.WB-02-G-5045, Maruti Van, subsequently
renumbered as TR-01-P-0394).
2. United India Insurance Company Limited,
Agartala Branch, Ganaraj Chowmohani,
P.O.-Agartala, P.S. West Agartala,
District-West Tripura.
Represented by its Branch Manager.
(Insurer of the vehicle bearing
Registration No.WB-02-G-5045, Maruti Van,
subsequently renumbered as TR-01-P-0394).

..... **Opposite Party Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	: Mr. S.K. Dutta, Advocate.
For the respondent No.2	: Mr. P. Gautam, Advocate.
Date of hearing and delivery of judgment and order.	: 06.08.2015.
Whether fit for reporting	: NO.

JUDGMENT & ORDER (ORAL)

This appeal for enhancement of compensation by the
claimant is directed against the award dated 13-12-2010 passed by

the learned Motor Accident Claims Tribunal, Court No.3, West Tripura, Agartala in case No. T.S.(MAC) 379 of 2007 whereby he awarded a sum of Rs.66,980/- to the claimant under the following heads:-

Pain and suffering	:- Rs. 15,000/-
<u>Medical expenses</u>	<u>:- Rs. 51,980/-</u>
Total	:- Rs. 66,980/-

2. The only issue is to what quantum of compensation the claimant is entitled. Immediately after the accident, the claimant was admitted in hospital on 27.03.2007 and he was found to be suffering from fracture of the neck of the right femur and fracture of the right distal radius. He was discharged from the hospital on 10.4.2007. On discharge, he was advised no weight bearing on his right leg till further advice. It appears that though the patient was discharged from hospital, he did not fully recover and there is record to show that after his discharge from the hospital he again went to Kolkata for his treatment on 27.3.2007, 14.5.2007 to 16.7.2007, 21.7.2008 to 28.7.2008. He again had to have a follow up checkup on 20.7.2009. However, finally his fracture did not heal properly and he was again admitted in the hospital at Kolkata on 24.03.2010 where he remained admitted till 03.04.2010. During this period, an operation was performed upon him wherein his hip was totally replaced. This replacement was done on 25.3.2010.

3. The learned Tribunal held that the hip replacement took place in the year 2010 and was not related to the injuries received in the accident. I am not at all in agreement with this

finding of the learned Tribunal. As pointed out above, in the first treatment which took place at Kolkata from 27.3.2007 to 10.4.2007, the claimant had suffered fracture of the neck of the right femur which is that part of the femur which joins to the pelvic girdle that is the hip. Thereafter, the petitioner went again to the hospital on 14.5.2007 wherein it is recorded that this is a case of follow up treatment following the previous treatment and graft was done. He was advised to start walking on crutches on 14.5.2007 and to continue plaster of paris for three weeks more. Similarly, he was advised more treatment on 16.7.2007. On 21.7.2008 it is recorded that in this postoperative follow up case, the patient is complaining of groin pain plus pain in the right knee. In the further treatment in the year 2008 itself hip mobilisation and replacement have both been suggested. However, the patient did not get his replacement done and went for conservative treatment till his hip was replaced on 25.3.2010. A hip replacement is a very serious operation and a person may not go for it at the first stage. It is more than apparent that the hip replacement was required because of the fracture which the claimant had suffered during the accident. Therefore, I hold that the claimant is entitled to claim the medical expenses for this hip replacement also.

4. It is well settled law that in a case of injuries compensation is awarded under two heads; pecuniary damages and non-pecuniary damages. Under the head of pecuniary damages, the expenses of treatment, attendants, special diet, transportation, hospitalization will be covered. Under the head of

pecuniary losses, the claimant will also be entitled to the amount of income which he has actually lost due to his being unable to attend his work and in case, the injury has caused a permanent disability, then the future loss of income shall also have to be considered. Under the head of non-pecuniary damages, normally damages will be awarded under the head of pain and suffering and in cases of permanent disability also for loss of amenities of life and future discomfort in life. In cases where the claimant is a young unmarried person and the injuries affect his marital prospects, damages for loss of marital prospects can also be awarded.

5. Applying the aforesaid principles, I now proceed to assess the compensation afresh. From the material on record, it is apparent that the claimant remained admitted in Kolkata from 27.3.2007 to 10.4.2007 and from 24.3.2010 to 03.4.2010, i.e. 14 days at the first instance and 10 days on the second occasion. Therefore, the total period of hospitalization is 24 days. During this period, the claimant would have required attendants round the clock. Since the attendant had to be taken from Tripura, at least one attendant would have been there and not only the attendant charges but the boarding and lodging of the attendant also have to be looked after. Keeping in view all factors, I assess the attendant charges in Kolkata at Rs.700/- per day and for 24 days they work out to Rs.16,800/- which is rounded off to **Rs.17,000/-**.

6. The claimant went to Kolkata at least on 5(five) occasions; three times in 2007, once in 2008 and once in 2010. Therefore, travel expenses have to be allowed to him for 5(five)

times and these travel expenses vouchers have been placed on record and the total of these tickets works out to Rs.72,542/-. The claimant may have spent some expenses on rickshaw and local transport also. Therefore, he is awarded **Rs.75,000/-** under this head.

7. The claimant has produced record of total medical expenses of Rs.1,82,484/-. In addition thereto, keeping in view the nature of treatment and also keeping future medical expenses in consideration, I award him a total sum of **Rs.2,00,000/-** under this head.

8. The claimant was a retired teacher. Even though he may have retired, he could have been doing some work and his income for purposes of assessment of this case is taken at Rs.7,500/- per month. He could not have worked at least from 24.3.2007 till the end of August, 2007 and, therefore, he is awarded loss of income for 5(five) months which works out to Rs.37,500/-. In addition thereto, the claimant had to go and live in Kolkata for one week in May, 2007, few days in July, 2007, one week in July, 2008, one day in July, 2009 and 10(ten) days in April, 2010. He has to be awarded loss of income for this period also and the total of this comes to approximately one month and he is awarded another sum of Rs.7,500/- and, therefore, the total loss of income works out to **Rs.45,000/-**.

9. The claimant has undergone pain and suffering which is very high. His initial injury may not have been serious but the fact remains that the injury did not heal and he had to remain under

treatment for almost 3(three) years till his hip was replaced. Keeping all these factors into consideration, he is awarded **Rs.50,000/-** for pain and suffering.

10. There is no disability certificate on record. Therefore, nothing more can be awarded to the claimant.

Therefore, the total compensation works out to Rs.(17,000 + 75,000 + 2,00,000 + 45,000 + 50,000) = Rs.3,87,000/- (rupees three lakh eighty seven thousand).

11. In view of the above discussion, the appeal is allowed. The award of the learned Tribunal is modified and the compensation is enhanced from Rs.66,980/- to Rs.3,87,000/-, i.e. by Rs.3,20,020/-. Since the Insurance Company has already satisfied the award of the Tribunal, it is directed to deposit the enhanced amount of compensation along with interest @ 9% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount in the Registry of this Court within 4(four) months from today after deducting/adjusting the amount, if any, already paid/deposited by them along with proof of such earlier deposit.

12. The appeal is disposed of in the aforesaid terms.

13. Send down the lower court records forthwith.

CHIEF JUSTICE